

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2300 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

KANUBHAI RAVJIBHAI PATEL

Versus

AHMEDABAD DIST CO.OP. BANK LTD

Appearance:

MR AK CLERK for Petitioner

MR SHIRISH JOSHI for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 01/12/1999

ORAL JUDGEMENT

This petition has been filed for quashing and setting aside the charge-sheet dated 8th April, 1988 at Annexure "C" in the departmental proceedings and the suspension order dated 13th April, 1987 and for a direction to the respondent authorities restraining from proceeding with the domestic inquiry pursuant to the

charge-sheet dated 8th April, 1988 and directing the respondent authorities to pay the petitioner subsistence allowance at the rate admissible in law during the period of suspension.

2. The charge-sheet dated 8th April, 1988 was issued to the petitioner being a cashier in Paldi Branch of Ahmedabad District Co-operative Bank Ltd., Ahmedabad. That on 6-7.2.1987 the petitioner came to the head office of the bank and told Manubhai S Shah, Head Cashier, that the Paldi Branch of the Bank requires cash of Rs.4 lacs. Accordingly, he prepared a voucher of Rs.4 lacs and signed the same as a cash receiver and took away the folder from the head office and on receipt of the said amount, the petitioner signed the register of cash, maintained in the head office.

The petitioner ought to have deposited the amount of Rs. 4 lacs in the Paldi branch of the bank, but instead of doing so, he had retained the same for personal use and in that way, he had illegally misappropriated the said amount till 27.2.87 and thereafter, he had deposited the said amount of Rs. 4 lacs through pay-in-slip dated 25/26 th February, 1987 in the head office in the account of Paldi branch. Thus, he had deposited the amount by signing as cash depositor. He was also charged that on 3/4.3.1987 he had come to the head office of the bank and told Manubhai, Head cashier that Paldi branch of the bank requires Rs. 6 lacs and accordingly, the petitioner prepared a voucher of Rs. 6 lacs and signed the same as cash receiver and took away the said amount. From the head office, on the receipt of the said amount, he had signed the register of cash forwarded and maintained in the head office, but the petitioner ought to have deposited the aforesaid amount of Rs.6 lacs in the Paldi branch of the bank, but instead of doing so, he had kept the said amount for his personal use and misappropriated the said amount and caused financial loss of huge amount to the bank. Thus, the petitioner has violated rule 7(3), 7(5)(i) and 7(5)(ii) of the Staff Regulations of the Bank and Standing Orders 23(5) and 23(13) for which provisions of punishment are mentioned in Order no. 24(A). The petitioner was directed to submit his explanation within a period of four days from the receipt of the charge-sheet as to why disciplinary action should not be taken against him in connection with the aforesaid misconduct, failing which legal action will be taken him believing that he was not interested in giving reply or explanation to the charge-sheet.

3. In respect of the very cause of action, two criminal complaints were lodged, one was filed by Narayanbhai A Patel, Additional Accountant working in the Head Office on 30th March, 1987 and the offence has been registered and police investigation against the accused was going on and the second complaint has been filed on 27th April, 1987 against two persons including the petitioner under section 420 read with sections 34, 114 of the Indian Penal Code and under section 408 read with sections 34 and 114 of the Indian Penal Code and under section 120-B of the Indian Penal Code and under sections 477-A read with sections 34 and 114 of the Indian Penal Code by Kalidas J Thakaor, agent of Paldi branch of the bank. As both, the criminal proceedings and the disciplinary proceedings in respect of the same charges were pending against the petitioner, this Court by its ad-interim order granted in terms of para 16(1) restrained the respondent authorities from proceedings with the departmental inquiry against the petitioner pursuant to the charge-sheet dated 8.4.88 at Annexure "C".

4. Heard the learned advocates for the parties. In the present case, no affidavit-in-reply has been filed by the respondents. The learned advocate for the petitioner submitted that both the charges mentioned in the charge-sheet are the subject matter of the criminal proceedings pending in the criminal court. This Court thought it proper to stay the further proceedings of the departmental inquiry by way of an ad-interim order dated 5.5.88. As the criminal case is pending since 1987, he could not contact the petitioner. As such, he is not able to state about the progress or conclusion of the criminal proceedings which were pending in the criminal court, but if they are pending, the trial court may be directed to conclude those criminal proceedings within a specified period of three months and till then the interim order passed by this Court be directed to be continued. In case, departmental proceedings are permitted to continue, the case of the petitioner would be prejudiced in the criminal proceedings. Hence, it is desirable to stay the departmental proceedings till the conclusion of the criminal proceedings. He also placed reliance on the decision of the Apex Court in the case of Depot Manager, Andhra Pradesh State Road Transport Corporation vs. Mohmed Yousuf Miya etc. reported in AIR 1997, SC, 2232 wherein it has been held that :

"It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in

criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental inquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. "

In the present case, the charge is grave and complicated one and hence it would be desirable to stay the departmental proceedings during the pendency of criminal proceedings in the criminal court. It is further pointed out by the learned advocate for the petitioner from the observations made by the Apex Court that under circumstances, what is required to be seen is whether departmental inquiry would seriously prejudice the delinquent in his defence at the trial in the circumstances. It is always a question of fact to be considered in each case depending on its own facts and circumstances. In the present case, the petitioner will be prejudiced if the inquiry is allowed to be proceeded with and the defence taken in the inquiry proceedings will prejudice in the criminal proceedings.

He has further relied on the judgment of the Apex Court in the case of Capt. M. Paulanthony vs. Bharat Gold Mines Ltd. and another reported in 1999(3) SCC,679 wherein it is held that if the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it is desirable to stay the departmental proceedings till conclusion of the criminal case.

5. On the other hand, the learned counsel for the respondents relied on the rule laid down in para 22(v) of the same decision wherein it has been held that if the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of pendency of criminal case, can be resumed and proceeded with, so as to conclude them at an early date. The purpose is that if the employee is found not guilty, his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest.

On the basis of the rule laid down by the Apex Court, the contention of the learned counsel for the respondents is that the charge of misappropriation is in respect of the incident dated 6/7.2.1987 and 3/4.3.87.

The charge-sheet in respect of misappropriation has been submitted on 8th April, 1988 and the further proceedings of the disciplinary inquiry on the basis of the charge-sheet have been stayed by this Court. The period of about 12 years has already elapsed and still then the criminal case has not yet been concluded and hence it is desirable on the basis of the rule laid down by the Supreme Court to vacate the interim order passed by this Court and dismiss the petition.

6. I have considered the rival contentions of the learned counsel for the parties. It is well settled rule that the criminal proceedings and departmental proceedings can go on simultaneously and at the same time. In a particular set of facts and circumstances, the court can stay the proceedings of the departmental proceedings till the conclusion of the criminal proceedings in the criminal court. In para-22 in the case of Capt. M.Pul Anthony vs. Bharat Gold Mines Ltd. and another (Supra), the Apex Court has it has been held as under:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The facts mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in

case he is found guilty, the administration may get rid of him at the earliest."

It is true that at one time, the defence in the departmental proceedings can be prejudiced on the basis of the defence taken in the criminal case. In the present case, it is true that temporary misappropriation and embezzlement has been alleged against the petitioner in respect of the amount of Rs. 4 lacs for a period of 20 days and he also embezzled and misappropriated the amount of Rs.6 lacs. But in the criminal case, there are two accused including the petitioner and there is another person facing the trial. The learned counsel for the petitioner could not point out that the same set of witnesses has to be examined in the criminal trial which has been cited in the charge-sheet. Though he was able to point out that three persons out of five namely N.A.Patel, M.S.Shah and R.A.Trivedi are the same persons to be relied on in both the proceedings. There are two persons in the charge-sheet, namely K.J.Thakore and K.S.Dabhi are also mentioned in the charge-sheet, but they are not cited in the complaint as a witness. But even if it is assumed that both the charges are based on the same set of facts and circumstances, in the criminal proceedings as well as in the domestic inquiry. There is no water-tight rule of law that criminal proceedings and domestic action cannot go simultaneously. In a particular set of facts and circumstances, the court has discretion to exercise power to stay the departmental proceedings during the pendency of the criminal proceedings, if it is found desirable in the facts and circumstances.

7. This is a case of 1987 and the departmental proceedings have already been stayed in the month of April, 1988 by way of an interim order of this Court. As the criminal case has not been yet concluded even after a period of 12 years, the departmental proceedings even if they were stayed by this court, can be resumed and proceeded with further so as to conclude them at the earliest.

8. On the basis of the above discussion, I am of the view that the ad-interim order by which the departmental proceedings have been stayed is required to be vacated. This petition has no merit and is liable to be dismissed.

9. So far as the question regarding quantum of subsistence allowance being paid to the petitioner is concerned, it is usually given at the rate prevailing as per rules and regulations. It is stated that the petitioner is being paid 1/3rd subsistence allowance, though in co-operative banks persons during suspension period are being paid 50% as subsistence allowance. As such, the respondents be directed to pay the petitioner at least 50% of the salary as subsistence allowance. In this respect, the petitioner is at liberty to move the authority concerned with a request to give him subsistence allowance at the rate of 50% of the salary or more which is admissible under the rules and regulations. If the petitioner makes such an application/representation, the respondents are directed to decide the same in accordance with law, within four weeks from the date of receipt of such application/representation.

10. Accordingly, this petition is hereby dismissed with aforesaid observations. Rule is discharged with no order as to costs. Ad-interim order dated 5.5.88 granted by this Court is hereby vacated.

11. In the last, the learned advocate for the petitioner requests to stay the operation of this order for a period of two weeks. I do not find any reasonable ground to stay this judgment and hence, the prayer is refused.

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